

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERTO DURAND,

Case No. 3:22-cv-00406-ART-CLB

Plaintiff,

ORDER

v.

MUARO,

Defendant.

Pro se Plaintiff Roberto Durand brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1). On September 12, 2022, this Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before November 14, 2022. (ECF No. 3). The Court warned Plaintiff that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis*, including an inmate account statement for the previous six-month period, or pay the full \$402 filing fee by that deadline. (*Id.* at 2-3). The November 14, 2022 deadline expired and Plaintiff did not file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee.

Because Plaintiff submitted several incomplete applications to proceed *in forma pauperis*, the Court considered meaningful alternatives to dismissal and issued another order granting Plaintiff one final opportunity to submit an inmate account statement for the previous six-month period on or before December 21, 2022. (ECF No. 7). That deadline expired and Plaintiff still has not filed an inmate account statement for the previous six-month period or paid the full \$402 filing fee. Nor has he asked for an extension of time to submit the required documents. Instead, Plaintiff filed two more incomplete applications to proceed *in forma pauperis*. (ECF Nos. 8, 9).

1 I. DISCUSSION

2 District courts have the inherent power to control their dockets, and “[i]n
3 the exercise of that power, they may impose sanctions including, where
4 appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los*
5 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based
6 on a party’s failure to obey a court order or comply with local rules. *See Carey v.*
7 *King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to
8 comply with local rule requiring *pro se* plaintiffs to keep court apprised of
9 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
10 (dismissal for failure to comply with court order). In determining whether to
11 dismiss an action on one of these grounds, the Court must consider: (1) the
12 public’s interest in expeditious resolution of litigation; (2) the Court’s need to
13 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
14 favoring disposition of cases on their merits; and (5) the availability of less drastic
15 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
16 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th
17 Cir. 1987)).

18 The first two factors, the public’s interest in expeditiously resolving this
19 litigation and the Court’s interest in managing its docket, weigh in favor of
20 dismissal of Plaintiff’s claims. The third factor, risk of prejudice to defendants,
21 also weighs in favor of dismissal because a presumption of injury arises from the
22 occurrence of unreasonable delay in filing a pleading ordered by the court or
23 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
24 1976). The fourth factor—the public policy favoring disposition of cases on their
25 merits—is greatly outweighed by the factors favoring dismissal.

26 The fifth factor requires the Court to consider whether less drastic
27 alternatives can be used to correct the party’s failure that brought about the
28 Court’s need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,

1 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
2 the party has disobeyed a court order does not satisfy this factor); *accord*
3 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that
4 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted
5 pursuit of less drastic alternatives prior to disobedience of the court’s order as
6 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
7 with the warning of dismissal for failure to comply[,]” have been “eroded” by
8 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally
9 dismissing a case, but must explore possible and meaningful alternatives.”
10 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

11 Because this action cannot realistically proceed until and unless Plaintiff
12 either files a fully complete application to proceed *in forma pauperis* or pays the
13 \$402 filing fee, the only alternative is to enter a third order setting another
14 deadline. But the reality of repeating two previous orders is that it often only
15 delays the inevitable and squanders the Court’s finite resources. The
16 circumstances here do not indicate that this case will be an exception. In both of
17 its previous orders, the Court instructed Plaintiff that he must file an inmate
18 account statement for the previous six-month period. (ECF Nos. 3, 7). Following
19 the Court’s latest order, Plaintiff did not file a request for an extension of time or
20 indicate that he was having difficulty securing an inmate account statement for
21 the past six months. Instead, Plaintiff ignored the Court’s order and filed two
22 incomplete applications to proceed *in forma pauperis*. (ECF Nos. 8, 9). Setting a
23 third deadline is not a meaningful alternative given these circumstances. So, the
24 fifth factor favors dismissal.

25 **II. CONCLUSION**

26 Having thoroughly considered these dismissal factors, the Court finds that
27 they weigh in favor of dismissal. It is therefore ordered that this action is
28 dismissed without prejudice based on Plaintiff’s failure to file a fully complete

1 application to proceed *in forma pauperis* or pay the full \$402 filing fee in
2 compliance with this Court's September 12, 2022, and November 21, 2022,
3 orders. The Clerk of Court is directed to enter judgment accordingly and close
4 this case. No other documents may be filed in this now-closed case. If Plaintiff
5 wishes to pursue his claims, he must file a complaint in a new case.

6 It is further ordered that Plaintiff's pending motions (ECF Nos. 4, 5, 6, 8,
7 9) are denied as moot.

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9 DATED THIS 6th day of January 2023.

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14 ANNE R. TRAUM
15 UNITED STATES DISTRICT JUDGE
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